IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.711 OF 2006

Arun Laxman Lokhande ...Appellant
Vs.
Ramchandra Gopal Diwakar & Ors. ...Respondents

Shri Dilip Bodake for the Appellant.
Shri Nitin Vhatkar for the Respondents.

CORAM : A. S. OKA, J.
DATE : JULY 31, 2006.

P.C.:

1. Heard the Advocate appearing for the Appellant. The Appellant is a third party obstructionist. An Application was made by the Appellant at Exhibit 52 in the execution proceedings of a decree for possession contending that before warrant of possession is issued, his rights should be adjudicated. The Application was rejected on the ground that earlier Application made by the Appellant at Exhibit 28 was rejected after adjudication and there is no difference between the two applications.

2. Shri Bodake appearing for the Appellant submitted that initially execution Application related only to two rooms out of three rooms which are the subject-matter of the decree for possession and later on by amending the execution Application, possession

warrant was sought in respect of the third room which is in possession of the Appellant. He submitted that possession of the two rooms is already handed over to the original Plaintiff. He submitted that present Application at Exhibit 52 relates to the third room in respect of which possession was sought by amending the execution Application. He, therefore, submitted that decision on earlier application at Exhibit 28 made by the Appellant will have no bearing on merits of the Application at Exhibit 52.

3. I have considered the submissions. Averments made in Application at Exhibit 28 show that the contention of the Appellant was that he was in possession of the rooms subject matter of the decree. The prayer in the Application was that it may be declared that the decree passed in favour of the original Plaintiff was not binding on the Appellant. It is not in dispute that an adjudication was made on the basis of the said Application as regards the rights of the Appellant. The order passed by the Executing court on Application at Exhibit 28 has been confirmed in Appeal in the year 2003 and the order has attained finality.

4. In view of the averments made in Application at Exhibt 28, it is very clear that adjudication was made as regards claim of the Appellant that the decree was not binding on him. In view of the adjudication which has attained finality, the courts below were right in holding that now there is no occasion to make a fresh application at Exhibit 52 for adjudication.

5. The view taken by the courts below is correct. There is no infirmity. No substantial question of law arises. Second Appeal is dismissed. No orders as to costs.

JUDGE